

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE:) Case No. 09-51928
)
WHITNEY DESIGN, INC.,) Chapter 11
)
Debtor.)
)
) FIRST AMENDMENT TO THE
) MOTION FOR ORDERS (A) AUTHORIZING
) SALE OF ASSETS FREE AND CLEAR OF ALL
) LIENS, CLAIMS, AND ENCUMBRANCES,
) SUBJECT TO HIGHER AND BETTER OFFERS,
) (B) APPROVING THE ASSUMPTION AND
) ASSIGNMENT OF EXECUTORY CONTRACTS
) AND UNEXPIRED LEASES, (C) ESTABLISHING
) SALE AND BIDDING PROCEDURES, AND (D)
) APPROVING EXPENSE REIMBURSEMENT
)
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COME NOW Debtor Whitney Design, Inc. ("Debtor"), by and through its undersigned counsel, and for its *First Amendment to the Motion for Orders (A) Authorizing Sale of Assets Free and Clear of All Liens, Claims, and Encumbrances, Subject to Higher and Better Offers, (B) Establishing Sale and Bidding Procedures, (C) Approving Expense Reimbursement, and (D) Approving Compromise and Settlement* (the "Sale Motion"), respectfully states as follows:

BACKGROUND

1. This Court has jurisdiction to hear and determine this matter pursuant to 28 U.S.C. § 1334, 28 U.S.C. §157(a), (b)(1), (b)(2)(A), E.D. Mo. L.R. 81-9.01(B)(1), and 11 U.S.C. §§ 363 and 365. This is a "core" proceeding under 28 U.S.C. §157(b)(2)(A).

2. Venue is proper in this Court pursuant to 28 U.S.C. §1409.

3. On November 21, 2009 (the “Petition Date”), Debtor filed a voluntary petition for relief under Chapter 11, Title 11 of the United States Code (the “Bankruptcy Code”).

4. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, Debtor is continuing to operate its businesses and manage its financial affairs as a debtor-in-possession.

5. On November 25, 2009, the Debtor filed the Sale Motion which seeks approval of an Asset Purchase Agreement dated as of November 25, 2009 by and between the Debtor and Household Essentials, LLC (the “Original APA”). On December 4, 2009, this Court granted that portion of the Sale Motion that requested approval of certain procedures governing the sale of the Acquired Assets (as defined in the Original APA).

6. Two objections to the Sale Motion were timely filed: one by Bajer Design & Marketing, Inc. (“Bajer Objection”) and the another by the United States of America, on behalf of the Department of Commerce and the Department of Homeland Security, U.S. Customs and Border Protection (the “United States Objection”).

7. On January 19, 2010, this Court entered its order sustaining the United States Objection in part and required that the Debtor amend the Sale Motion and the Original APA to exclude the Avoidance Actions (as defined in the Original APA) from the definition of “Acquired Assets”.

8. The Debtor and Household have agreed to amend the Original APA to (a) comply with the Court’s January 19, 2010 order, (b) resolve the Bajer Objection, and (c) make certain other changes agreed to among the parties. A true and genuine photocopy of the First Amendment to the Asset Purchase Agreement is attached hereto as Exhibit A and incorporated herein by this reference. The Original APA as amended by the First Amendment shall be referred to as the “Household APA”.

9. The changes outlined in the First Amendment all inure to the Debtor and the bankruptcy estate's benefit. The Debtor submits that no further notice is needed.

WHEREFORE the Debtor hereby respectfully requests entry of a Sale Order:

- (a) authorizing and directing the Debtor to sell the Acquired Assets to Household pursuant to the Sale Motion (as amended hereby) and the Household APA ;
- (b) approving the assumption and assignment of executory contracts and unexpired leases included among the Acquired Assets, and
- (c) waiving all applicable stay periods under F. Rules of Bankr. P. 6004(h) and 6006(d).

Respectfully submitted,

THOMPSON COBURN LLP

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Attorneys for Debtor and Debtor-in-Possession

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and genuine copy of the foregoing was served electronically on this 21st day of January, 2010 on all parties on the Court's ECF notice list.

/s/ David A. Warfield

EXHIBIT A

(First Amendment to Asset Purchase Agreement)

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT is made and entered into effective as of January 20, 2010, by and between HOUSEHOLD ESSENTIALS, LLC, a Missouri limited liability company, or its assigns (the "Buyer") and WHITNEY DESIGN, INC., a Delaware corporation (the "Seller").

WHEREAS, on November 21, 2009, the Seller filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code and its case is pending as Case No. 09-51928 (the "Bankruptcy Case") before the United States Bankruptcy Court for the Eastern District of Missouri (the "Bankruptcy Court");

WHEREAS, the Buyer and Seller entered into an Asset Purchase Agreement dated as of November 25, 2009 (the "Original APA");

WHEREAS, on November 25, 2009, the Seller filed in the Bankruptcy Case a motion entitled "Motion for Orders (A) Authorizing Sale of Assets Free and Clear of All Liens, Claims and Encumbrances, Subject to Higher and Better Offer, (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, (C) Establishing Sale and Bidding Procedures, and (D) Approving Expense Reimbursement" (the "Sale Motion");

WHEREAS, the Sale Motion requested the Bankruptcy Court to approve the Original APA;

WHEREAS, the parties hereto now wish to amend the Original APA as set forth herein.

IN CONSIDERATION OF THE PREMISES, AND OF THE MUTUAL PROMISES HEREINAFTER SET FORTH, the parties hereby agree as follows:

1. Paragraph 2.1(a)(xxiii) of the Original APA is deleted in its entirety and replaced by the following:

“(xxiii) all causes of action, excluding Avoidance Actions.”

2. Paragraph 2.3 of the Original APA is amended by adding new subparagraphs (g), (h) and (i) which shall each read in its respective entirety as follows:

“ (g) all Avoidance Actions;

(h) all Floor-Standing, Metal-Top Ironing Tables (classified under HTSUS subheading 9403.20.0011) and Certain Parts Thereof (including metal top and leg components classified under HTSUS subheading 9403.90.8040) from the People’s Republic of China (the “Excess Floor-Standing Metal-Top Ironing Boards”); and

(i) all rights and interests, if any, in designs and products alleged by Bajer Design & Marketing, Inc. in Case No. 1:09-cv-01815 filed in the United States District Court for Northern District of Illinois as infringing its U.S. Pat. No. 5,946,533.”

3. A new paragraph 12.7 is added to the Original APA that reads as follows:

“12.7 Storage and Insurance. Buyer shall provide rent-free storage to Seller for the Excess Floor-Standing Metal-Top Ironing Boards for ninety (90) days following the Closing. Buyer and Seller shall further cooperate to ensure that the Excess Floor-Standing Metal-Top Ironing Boards are adequately insured against property or casualty loss.”

4. Promptly upon execution of this First Amendment, the Seller shall file with the Bankruptcy Court an amendment to the Sale Motion.

5. Except as expressly modified herein, all other terms and conditions of the Original APA shall remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties below have executed this First
Amendment to Asset Purchase Agreement as of the date and year first above-written.

BUYER:

HOUSEHOLD ESSENTIALS, LLC

By: _____
Name: _____
Title: _____

SELLER:

WHITNEY DESIGN, INC.

By: _____
Name: _____
Title: _____